

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEVEN CLAYTON SKIDMORE

Plaintiff,

v.

SGT. HILL, et al.,

Defendants.

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CIVIL ACTION NO.
3:08-CV-1845-P

ORDER


This is a *pro se* civil rights suit brought by a state inmate pursuant to 42 U.S.C. § 1983. Plaintiff alleges claims of excessive force and failure to render proper medical aid. The magistrate judge filed his report on October 20, 2008 recommending dismissal of the suit as barred by limitations. Plaintiff was granted an extension of time to file objections and timely filed his objections on November 26, 2008.

Plaintiff does not dispute that his claims accrued on October 14, 2008, and that suit was not filed until October 16, 2008. In response to the magistrate judge's report, plaintiff asserts that he was in administrative lockdown for 61 days in 2008. Plaintiff argues that limitations should be tolled during the time he was in lockdown. Whether limitations should be tolled is controlled by Texas law, and under Texas law, imprisonment does not toll limitations. *Gonzales v. Wyatt*, 157 F.3d 1016, 1020 (5th Cir. 1998); Tex. Civ. Prac. & Rem. Code § 16.001. Even accepting plaintiff's assertions as true, plaintiff still has not shown why he was unable to file his complaint within two years after accrual of his claims. The magistrate judge properly found that plaintiff has not shown he is entitled to equitable tolling. Additionally, the magistrate judge

properly determined that the mailbox rule does not apply in this case because plaintiff sent his complaint to a third party for filing with the court. *Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002). Plaintiff's objections are overruled.

After a *de novo* review of the magistrate judge's report and plaintiff's objections, the court accepts the Findings, Conclusions and Recommendation of the magistrate judge and adopts them as the findings and conclusions of this court. Plaintiff's complaint is dismissed with prejudice as time barred.

Signed this 17th day of December 2008.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE